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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 Charles Thompson, ) CV 18-02710-PHX-RCC (LAB)  
9 Petitioner, )  
10 vs. ) **REPORT AND RECOMMENDATION**  
11 Charles L. Ryan, et al., )  
12 Respondents. )  
13  
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15 Pending before the court is a petition for writ of habeas corpus filed on August 27, 2018,  
16 by Charles Thompson, an inmate currently held in the Arizona State Prison Complex in  
17 Florence, Arizona. (Doc. 1)

18 Pursuant to the Rules of Practice of this court, the matter was referred to Magistrate  
19 Judge Bowman for report and recommendation. LRCiv 72.2(a)(2).

20 The Magistrate Judge recommends that the District Court, after its independent review  
21 of the record, enter an order dismissing the petition. It is time-barred.  
22

23 Summary of the Case

24 Thompson was convicted after a plea of guilty to one count of molestation of a child and  
25 two counts of attempted molestation of a child. (Doc. 11-2, p. 116) On February 18, 2014, the  
26 trial court sentenced Thompson pursuant to a plea agreement to a 15-year term of imprisonment  
27 and lifetime probation. (Doc. 11-1, p. 46); (Doc. 11-2, p. 116)  
28

1       Thompson filed notice of post-conviction relief (PCR) on March 26, 2014. (Doc. 11-1,  
2 p. 61) Appointed counsel was unable to find any colorable claims, so the PCR court allowed  
3 Thompson to file a petition pro per. (Doc. 11-1, pp. 65-66) Thompson filed his petition on  
4 January 20, 2015. (Doc. 11-1, p. 68) The PCR court dismissed the petition summarily on June  
5 19, 2015. (Doc. 11-2, p. 77)

6       Thompson filed a petition for review on July 20, 2015. (Doc. 11-2, p. 79) He argued  
7 his sentence was illegal pursuant to A.R.S. § 13-603 and correction of the sentence would  
8 violate Double Jeopardy. (Doc. 11-2, pp. 85-90) On June 8, 2017, the Arizona Court of  
9 Appeals granted review but denied relief. (Doc. 11-2, pp. 120-122) Thompson was granted an  
10 extension of the deadline for filing a petition for review with the Arizona Supreme Court. (Doc.  
11 11-2, p. 124) But he failed to file a petition by the new deadline, August 9, 2017. (Doc. 11-2,  
12 p. 124) The Arizona Supreme Court dismissed the proceeding on August 29, 2017. *Id.*

13       On August 23, 2018, Thompson constructively<sup>1</sup> filed in this court a petition for writ of  
14 habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1, p. 8) He claims his sentence of “flat  
15 time” is illegal and A.R.S. § 13-603(k) is unconstitutionally vague and applying it to his  
16 sentence on count 2 violates the Double Jeopardy Clause (Doc. 1, p. 6)

17       On January 11, 2019, the respondents filed an answer arguing, among other things, that  
18 the petition is time-barred. (Doc. 11) They are correct. The court does not reach the  
19 respondents’ alternate arguments.

20       Thompson did not file a timely reply.

21

22       Discussion

23       The writ of habeas corpus affords relief to persons in custody in violation of the  
24 Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). The petition,  
25 however, must be filed within the applicable limitation period or it will be dismissed. The  
26 statute reads in pertinent part as follows:

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28       <sup>1</sup> On this date, Thompson placed his petition in the prison mailing system. (Doc. 1, p. 8)

1 (1) A 1-year period of limitation shall apply to an application for a writ of  
2 habeas corpus by a person in custody pursuant to the judgment of a State  
3 court. The limitation period shall run from the latest of--  
4  
5 (A) the date on which the judgment became final by the conclusion of  
6 direct review or the expiration of the time for seeking such review;  
7  
8 (B) the date on which the impediment to filing an application created  
9 by State action in violation of the Constitution or laws of the  
10 United States is removed, if the applicant was prevented from filing  
11 by such State action;  
12  
13 (C) the date on which the constitutional right asserted was initially  
14 recognized by the Supreme Court, if the right has been newly  
15 recognized by the Supreme Court and made retroactively  
16 applicable to cases on collateral review; or  
17  
18 (D) the date on which the factual predicate of the claim or claims  
19 presented could have been discovered through the exercise of due  
20 diligence.  
21  
22 (2) The time during which a properly filed application for State  
23 post-conviction or other collateral review with respect to the pertinent  
24 judgment or claim is pending shall not be counted toward any period of  
25 limitation under this subsection.  
26  
27 28 U.S.C. § 2244(d). The “one-year statute of limitations . . . applies to each claim in a habeas  
28 application on an individual basis.” *Mardesich v. Cate*, 668 F.3d 1164, 1170 (9<sup>th</sup> Cir. 2012).  
29  
30 The limitation period for Thompson’s petition was triggered on “the date on which the  
31 judgment became final by the conclusion of direct review or the expiration of the time for  
32 seeking such review.” 28 U.S.C. § 2244(d)(1)(A). It does not appear to the court that any of  
33 the other possible “triggers” apply here. And Thompson does not dispute the respondents’  
34 assertion that § 2244(d)(1)(A) applies. *See* (Doc. 11, p. 9)  
35  
36 Thompson was convicted pursuant to a plea of guilty. (Doc. 11-2, p. 116) Accordingly,  
37 he waived his right to a conventional direct appeal, but he had a right to pursue an “of-right”  
38 post-conviction relief (PCR) proceeding, which he did. *See Summers v. Schriro*, 481 F.3d 710,  
39 711 (9<sup>th</sup> Cir. 2007). The PCR proceeding commenced when Thompson filed his notice on  
40 March 26, 2014. (Doc. 11-1, p. 61) The proceeding ended on August 9, 2017, when  
41 Thompson failed to file a petition for review with the Arizona Supreme Court by the court-  
42 extended deadline. (Doc. 11-2, p. 124); *see Gullick v. Bock*, 2010 WL 457483, at \*8, \*18 n.  
43 5 (D. Ariz. 2010), *aff’d*, 423 F. App’x 762 (9<sup>th</sup> Cir. 2011) (The judgment becomes final when

1 the petitioner fails to file his petition for review by the extended deadline, not when the court  
2 dismisses the proceeding) *see also Randle v. Crawford*, 604 F.3d 1047, 1054 (9<sup>th</sup> Cir. 2010)  
3 (Judgment became final when the deadline for filing a notice of appeal expired, not when the  
4 untimely notice of appeal was dismissed.). His judgment became final on that day. *See*  
5 *Summers v. Schriro*, 481 F.3d 710, 711 (9<sup>th</sup> Cir. 2007) (“AEDPA’s one-year statute of  
6 limitations does not begin to run until the conclusion of the Rule 32 of-right proceeding and  
7 review of that proceeding, *or until the expiration of the time for seeking such proceeding or*  
8 *review.*”) (emphasis added). The one-year limitation period began running the next day and  
9 expired one year later on August 9, 2018. *See Patterson v. Stewart*, 251 F.3d 1243, 1247 (9<sup>th</sup>  
10 Cir. 2001). The pending petition was constructively filed on August 23, 2018. (Doc. 1, p. 8)  
11 It is time-barred.

12 Thompson does not argue that he is entitled to statutory or equitable tolling. (Doc. 1, p.  
13 8)  
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15 **RECOMMENDATION**

16 The Magistrate Judge recommends that the District Court, after its independent review  
17 of the record, enter an order Dismissing the petition for writ of habeas corpus. (Doc. 1) It is  
18 time-barred.

19 Pursuant to 28 U.S.C. §636 (b), any party may serve and file written objections within  
20 14 days of being served with a copy of this report and recommendation. If objections are not  
21 timely filed, they may be deemed waived. The Local Rules permit a response to an objection.  
22 They do not permit a reply to a response.

23  
24 DATED this 2<sup>nd</sup> day of April, 2019.

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28 Leslie A. Bowman  
United States Magistrate Judge